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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/619,222

07/14/2003

Melody M. Benton

7029

29790 7590 01/23/2007
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EXAMINER

VENKAT, JYOTHSNA A

ART UNIT

PAPER NUMBER

1615

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

01/23/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/619,222

Applicant(s)

BENTON, MELODY M.

Examiner

JYOTHSNA A. VENKAT Ph. D

Art Unit

1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) 5 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>7/14/03</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Receipt is acknowledged of election filed on 10/13/06. Receipt is also acknowledged of IDS filed on 7/14/03.

Election/Restrictions

Applicant's election with traverse of group I in the reply filed on 10/13/06 is acknowledged. The traversal is on the ground(s) that the search of more than one field is not an uncommon burden and as to the process being capable of use to make another product, applicant respectfully disagrees in that she has experimentally determined that the steps and ingredients described, are uniquely essential to her product. This is not found persuasive because the restriction requirement between group I and II is in compliance with MPEP 806.05 (f) and due to different classification, it is a search burden to examine both the groups.

The requirement is still deemed proper and is therefore made FINAL.

Claim 5 is withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 10/13/06.

Claims 1-4 are pending in the application and the status of the application is as follows:

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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Recitation of “commercially available shampoo” is unclear as to applicant’s intent.

Claim 1 recites commercially available shampoo with a thickening agent and claim 1 also recites gelatin... and thickening agent. Claim is ambiguous. Is gelatin the thickening agent or the aqueous solution has gelatin and thickening agent?

What is meant by bloom? Detailed explanation is requested.

Regarding claims 2-3, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Recitation of trade name in claim 2 is indefinite, since the trade name is used to describe a product.

Claim 4 is unclear as to applicant intent. Does the pH correspond to gelatin or gelatin solution?

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 3 -4 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of U. S. Patents 5, 785,962 ('962) and 6,323,166 ('166).

Patent '962 teaches hair shampoo using anionic and nonionic surfactants. See col.1, lines 40 through col.2. Patent at col.3, line 58 suggests that thickeners can be added. See example 1 claimed panthenol. The difference between the patent and instant application is patent '962 does

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not teach food grade gelatin. However patent '166 suggests shampoo compositions using gelatin as a thickener. See col.4, lines 1-26. Patent '166 does not suggest food grade gelatin instead gelatin.

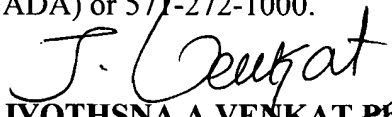
Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to prepare shampoo compositions of '962 using anionic and non-ionic surfactants and panthenol, thickener and also add gelatin taught by patent in analogous shampoo compositions. One of ordinary skill in the art would be motivated to add gelatin into the compositions with the reasonable expectation of success that the gelatin will act as thickener and thickeners are added to control the viscosity of the compositions. Absent a showing the criticality of food grade gelatin vs. gelatin, claims are prima facie obvious over the combination of U. S. Patents '962 and '166.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JYOTHSNA A. VENKAT Ph. D whose telephone number is 571-272-0607. The examiner can normally be reached on Monday-Friday, 10:30-7:30:1st Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL WOODWARD can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


JYOTHSNA A VENKAT Ph. D
Primary Examiner
Art Unit 1615
